

***United States Court of Appeals
for the Second Circuit***



**PETITIONER'S
BRIEF AND
APPENDIX**

74-1803

IN THE

UNITED STATES COURT OF APPEALS

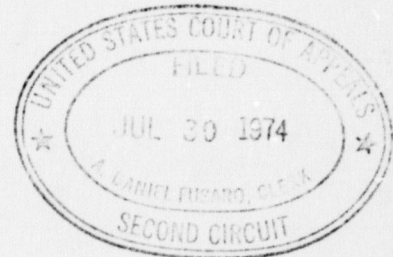
FOR THE SECOND CIRCUIT

Docket No. 74-1803

CHARLES H. MOGULNICKI
Petitioner- Appellant
vs.

TROOPER ROBERT KELLER
and
SERGEANT MORTON DENNERSTEIN

STATE OF CONNECTICUT
Respondents- Appellees



Petition For a Writ of Habeas Corpus in a Suit
for Damages, arising from an Unlawful Arrest
and a Unlawful Search and Seizure.

PETITIONER'S BRIEF + Appendix

On Appeal From The United States District Court
For The District Of Connecticut.

For Petitioner- Appellant
Charles H. Mogulnicki
11 High Street
Portland, Connecticut. 06480

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PRINCIPAL ISSUE.

Whether the United States District Court, had the right to shun the mandate of the United States Constitution, in dismissing and denying the plaintiffs Writ of Habeas Corpus, giving the defendant's a license to steal and the right to suspend the 4th and 14th Amendments to the United States Constitution.

CASE AUTHORITIES

Henry vs United States, Supra 361 U.S. at 103

The Fourth Amendment specifically interdicts the court from considering evidence seized after the arrest in determining the validity of the arrest.

State of Connecticut vs Mogulnicki, (1970) at 270 2d 364

The results of an unlawful search and seizure cannot be used to sustain a finding of probable cause for arrest.

LAW

Article 4 of the Bill of Rights, provides.

" The right of people to be secure in there persons, houses, papers and effects against unreasonable searches and seizure, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particilarly describing the place to be searched, and the persons or things to be seized."

To the Honorable Chief Judge and Associate Judges of the United States Court of Appeals for the Second Circuit.

The Appellant, Charles H. Mogulnicki, appearing Pro-Se in the above entitled case, respectfully requests this court to review the case on his application for a Writ of Habeas Corpus on the Constitutionality of the United States District Courts dismissal and denial of the plaintiff's motion for summary judgment as a matter of law and justice.

The Appellant, Charles H. Mogulnicki, also recites that 28 U.S.C. 2403 may be applicable and shall be served upon the Solicitor General, Department of Justice, Washington, D.C. 20530.

It is the appellant's contention, that it is the duty of the courts to uphold the Constitutionality of the law.

CIVIL RIGHTS

Under Section 1983 of Title 42 of the United States Code, the appellant Charles H. Mogulnicki, alleges that the appellee's, acted under Color of Law, depriving the plaintiff his rights guaranteed by the Statutes of the State of Connecticut and of Section 7-9 of Article First of the Connecticut Constitution of 1965 and of Amendments 4 and 14 of the United States Constitution.

Under Section 1985 of Title 42 of the United States Code, the appellant, alleges a conspiracy by the appellee's, to deny the plaintiff, equal protection under the law.

STATEMENT OF THE CASE

On December 4, 1967 Trooper Robert Keller and Sgt. Morton Dennerstein of the Criminal Intelligence, State of Connecticut, made a warrantless arrest and conducted a warrantless search and seizure of the plaintiffs person at his place of employment, Standard Knapp, Division of Emhart,

Main Street, Portland, Connecticut., charged the plaintiff with crime of "pool selling" a misdemeanor under Section 53-295 of the Connecticut General Statutes and seized the sum of \$705.00 from a wallet on his person, with-out a search warrant.

On July 5, 1968 a motion to dismiss the information against the plaintiff, on the grounds that it was in violation of the Statutes of the State of Connecticut and of Section 7-9 of Article First of the Connecticut Constitution of 1965 and of Amendments 4 and 14 of the United States Constitution, was denied by Judge Angelo G. Santaniello, in the 9th Circuit Court, Middletown, Connecticut.

On July 11, 1968 the plaintiff was brought to trial and was convicted before a Jury and Judge Eli Cramer, in the 9th Circuit Court, receiving a sentence of one year in jail, suspended after (60) days and a \$200.00 fine.

On January 9, 1970 the Appellant Division of the Connecticut State Court found no error in the conviction of the plaintiff. This court did not pass upon the Constitutionality of the plaintiff's arrest. The Connecticut Supreme Court denied the plaintiff's, petition for Certification. A Petition for Certicrari to the United States Supreme Court was denied.

On December 16, 1970 the plaintiff was put in detention by the State of Connecticut at the Hartford State jail to serve a (60) day sentence, on February 16, 1971, plaintiff served his entire sentence and upon his release, paid the State of Connecticut the fine.

Upon incarceration, Writ of Habeas Corpus was filed in the United States District Court, District of Connecticut, it was denied by Judge M.J. Blumenfeld.

A Writ of Habeas Corpus was filed to the United States Court of Appeals for the Second Circuit. This Court did not act on the petition.

On March 15, 1971 the Appellant-Plaintiff, filed suits for damages in the amount of Two Hundred and Fifty Thousand Dollars, (\$250,000.00 upon the Defendant's-Appellee's for Compensatory and Punitive damages, because of an Illegal Arrest, Illegal search and seizure, Illegal detention and a Illegal fine. The Warrantless arrest, warrantless search and seizure was a gross injustice and a total defiance of the plaintiffs Civil Rights under the 4th and 14th Amendments to the United States Constitution.

As a result of this arrest the Plaintiff-Appellant, (1) had lost his job on December 5, 1967 and his continued unemployment to date, with loss of income. (2) As a result of the conviction, he was required to the illegal jail sentence and pay an illegal fine. (3) Had suffered extreme mental and physical anguish. (4) Had suffered the loss of \$705.00 taken from a wallet on his person, that was never ordered confiscated by the court.

On March 3, 1972 the plaintiff-appellant, filed a motion for a trial by jury in the above entitled case, the motion was denied by the United States District Court.

On May 25, 1972 the plaintiff-appellant, filed a request for admission of facts upon the defendants, through there Attorney John F. Scully in the above entitled case. The defendant's in response to the request for admission, admit the allegation in the complaint. (A copy is submitted as Exhibit D.)

On September 21, 1972 the plaintiff, filed a Motion for summary judgment in the United States District Court, District of Connecticut, under Rule 56, Fed. R. Civil. P., the defendant's also filed a cross-motion asking for summary judgment, raising two defenses. (1) Statute of limitation. (2) Collateral estoppel and res adjudicata. The plaintiff's motion for summary judgment as a matter of law was denied. The defendant's cross-motion was granted. This ruling by the United States Dis-

strict Court is clearly in violation of the plaintiff's - appellant's Civil Rights under the 4th and 14th Amendments to the United States Constitution.

An Appeal to the United States Court of Appeals for the Second Circuit, was filed by the plaintiff. This appeal was dismissed by the court, on a motion by the defendant's for lack of prosecution or, in the alternative, to direct the appellant to post a bond for costs in the minimum amount of \$250.00 dollars) pursuant to Rule 8 Fed. R. of Appellant Procedure.

ARGUMENT IN SUPPORT OF WRIT

The defenses raised by the defendant's (1) statutes of limitations. (2) res adjudicata and collateral estoppel, are ill-founded and without legal merits, and in violation of the 4th and 14th Amendments to the United States Constitution. The above entitled case was pending in the courts until December of 1970. The issue of the Warrantless search and seizure of the \$705.00 from the plaintiff's person was never raised by the plaintiff's Attorney in the State Courts, therefore the courts did not rule on the Constitutionality of the arrest. When Trooper Robert Keller, and Sgt. Dennerstein made the warrantless arrest and conducted the warrantless search and seizure of the plaintiff's person, there was no incriminating evidence in his possession, showing that the plaintiff was committing or had committed any crime. Trooper Keller, had the plaintiff under surveillance over a period of several days, if Trooper Keller, taught that the plaintiff was committing a crime or that there was probable cause, he should have obtained a search warrant from a Judge upon probable cause. It is the plaintiff's contention that none of the acts which Trooper Keller, had testified that he observed the plaintiff committing, either individually or in total, any less innocent than the acts which were held to be insufficient to justify an

arrest and search and seizure with-out a warrant on the basis of probable cause in, Henry v United States, supra (carrying cartons from a residence to an automobile. Perry v United States, supra (stopping to talk with and making exchanges with known narcotics users.) On the basis of the record which was before the court, when it ruled that probable cause to arrest existed, the plaintiff contends that a Judge would have no basis for issuing a search warrant.

CONCLUSION

Wherefore for the reasons giving, Petitioner prays that this Court reverse the Ruling of the lower court and grant the Petition for a Writ of Habeas Corpus and damages, as a matter of Law and Justice.

Dated
July 29, 1974

Respectfully submitted .
Charles A. McLaughlin
11 High Street
Portland, Conn. 06480
Pro-Se Attorney for Petitioner- Appellant

Certification

This is to certify that two copies of the above Brief on Appeal to the United States Court of Appeals for the Second Circuit, has been mailed, via U.S. Mail, postage prepaid, on July 29, 1974., to Attorney General Robert K. Killian, 30 Trinity Street, Hartford, Connecticut., to Attorney John F. Scully, 266 Pearl Street, Hartford, Connecticut.

Charles H. Mogulnicki
11 High Street
Portland, Conn. 06480

APPENDIX

Charles H. Mogulnicki

Civil No. H.269

vs

State of Connecticut, et al

Your petition for a Writ of Habeas Corpus in the above captioned case has been endorsed by Judge Blumenfeld as follows:

"Calling this action a petition for a Writ of Habeas Corpus does not change its character from that of a suit for damages. The claims alleged have been fully litigated in Civil No's 14,304, 14,788. Those decisions are final. The principle of res judicata requires therefore that this "petition" be denied and dismissed. It is so Ordered, 5/29/74, M.J.B., U.S.D.J."

Sylvester A. Markowski
Clerk

On January 16, 1973. Honorable: T. Emmet Clarie, Judge., of the United States District Court, in his Ruling in Civil No. 14,788 stated. "Quote" There is no question but that the question of probable cause for the plaintiff's arrest was put in issue in the State Courts and determined adversely to him

Hon: T. Emmet Clarie, Judge.

Form No. 106 Rev.

H 269

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DATE	PROCEEDINGS	Date Order Judgment N
1973	1. Petition for a writ of Habeas Corpus filed.	
-17	Endorsed as Follows "Calling this action a petition for a Writ of Habeas	
29-74	Corpus does not change its character from that of a suit for damages. The claims alleged have been fully litigated in Civil No's 14,304, 14,788. Those decisions are final. The principle of res judicata requires therefore that this petition be denied and dismissed. It is So Ordered. 5/29/74, M.J. B. U.S.D.J., "Blumenfeld, J.m5/31/74 Copies mailed to petitioner and Atty General, and Atty Scully.	
-4	2. Notice of Appeal filed by Petitioner. Copy of Notice mailed to New Haven. Civil Appeals Management Plan and forms C & D mailed to Petitioner.	184

